

**In the United States Bankruptcy Court**  
**for the**  
**Southern District of Georgia**  
**Savannah Division**

In the matter of:	)	
	)	Adversary Proceeding
ROY L. ALLEN, II	)	
(Chapter 7 Case Number <u>98-40838</u> )	)	Number <u>98-4185</u>
	)	
<i>Debtor</i>	)	
	)	
	)	
	)	
EDWARD J. COLEMAN, III	)	
TRUSTEE	)	
	)	
<i>Plaintiff</i>	)	
	)	
	)	
v.	)	
	)	
ROY L. ALLEN, II	)	
	)	
<i>Defendant</i>	)	

**MEMORANDUM AND ORDER**

The Trustee's Complaint to Deny Discharge was filed by the Trustee/Plaintiff in the above-styled Adversary Proceeding on August 14, 1998. The Debtor/Defendant was properly served and is subject to the jurisdiction of this Court and the matter was tried on Thursday, September 1, 1999. Plaintiff/Trustee appeared and presented evidence and argument. No appearance was made by the Debtor or on the Debtor/Defendant's behalf. The Court now enters the following Findings of Fact and Conclusions of Law.

## FINDINGS OF FACT

An involuntary petition was filed against Debtor on March 18, 1998.

The Plaintiff, Edward J. Coleman, III, was appointed as Trustee in this case and became the permanent case Trustee at the Section 341 meeting of creditors held on May 14, 1998. The Plaintiff conducted an extensive examination of the Debtor at the Section 341 meeting and the transcript from that meeting was prepared at Plaintiff's request.

Prior to filing bankruptcy, the Debtor had been an attorney licensed to practice law in the State of Georgia for approximately 20 years until he was suspended from the practice of law in December 1997. In June 1998 the Debtor pled guilty to a 13 count accusation presented against him by the District Attorney's Office for Chatham County, Georgia. The Debtor was subsequently sentenced to a prison term of ten years followed by a period of probation.

The evidence presented at trial in this adversary proceeding showed that the Debtor admitted to the theft of over \$500,000.00 from various clients during a period of approximately 24 months prior to filing bankruptcy.

The Debtor's schedules in this case, particularly Schedules A, B, and C, reflect only a cursory effort at fulfilling the requirements of a debtor to disclose completely and accurately his assets and other financial circumstances. The evidence reflected that at

the Section 341 meeting of creditors the Debtor admitted that he did not review closely the schedules before signing a verification as to their accuracy.

The evidence also revealed that the Debtor and his counsel were aware of the inadequacies of the schedules at the time of the Section 341 meeting of creditors, affirmatively stated the need to amend those schedules so that they would be complete and accurate, but that the Debtor failed to file any such amendments to his schedules after the Section 341 meeting of creditors.

The Debtor's schedules as filed, reflect a total failure to adequately explain the loss of assets or the inability of the Debtor to pay his debts, in that over one-half million dollars was misappropriated by Debtor within 24 months of his bankruptcy, and no accounting for those funds was provided to the Trustee.

The evidence further revealed that the Debtor failed to maintain records in the form of client ledgers for his law practice by which the Plaintiff/Trustee could compare checking account deposits to particular client ledgers (or cases) to trace these revenues; similarly, the Debtor failed to keep records in a ledger form recording expenses incurred on behalf of any particular client.

The evidence further shows that certain records in the possession of the Debtor's accountant were requested by the Plaintiff/Trustee but that the accountant was instructed not to turn those over to the Plaintiff/Trustee.

The Plaintiff/Trustee has made a *prima facie* case against the Debtor/Defendant.

### CONCLUSIONS OF LAW

While the Trustee's Complaint to Deny Discharge in this case asserted four separate grounds under 11 U.S.C. § 727, the Court concludes that based on the evidence the Debtor should be denied a discharge in this case on two separate grounds, namely 11 U.S.C. § 727(a)(3) and (a)(5).

The Debtor has failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the Debtor's financial condition or business transactions might be ascertained, within the meaning of 11 U.S.C. § 727(a)(3).

The Debtor has failed to explain satisfactorily, before determination of denial of discharge under 11 U.S.C. § 727 any loss of assets or deficiency of assets to meet the Debtor's liabilities, within the meaning of 11 U.S.C. § 727(a)(5).

The Court is satisfied that the Plaintiff has carried his burden of proof in demonstrating that the Debtor has failed to explain satisfactorily, before determination of denial of discharge, any loss of assets or deficiency of assets to meet his liabilities, and that the Debtor has failed to keep adequate records. The Debtor failed to appear personally or through counsel despite the granting of continuances by this Court to afford Debtor the

opportunity to retain counsel. No evidence was received to negate or rebut the Trustee's *prima facie* case.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that judgment is entered in favor of the Plaintiff/Trustee and the Debtor's discharge in this bankruptcy proceeding is DENIED.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of November, 1999.